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### Abbreviations:

“R.B.II”      Respondent Bi-State’s Brief in Appeal No. ED82467

## TABLE OF AUTHORITIES

Cases	Page
<u>Davis v. GE</u> , 991 S.W.2d 669, 703 (Mo.App.S.D. 1999)	4
<u>Investors Title Co. v. Chicago Title Ins. Co.</u> , 18 S.W.3d 70, 72 (Mo.App.E.D. 2000)	5, 6
<u>Land Clearance for Redevelopment Auth. of Kansas City v. Kansas Univ. Endowment Ass’n.</u> , 831 S.W.2d 649, 650 (Mo.App.W.D. 1992)	5, 6
<u>Moore, ex rel. Moore v. Bi-State Dev. Agy.</u> , 87 S.W.3d 279 (Mo.App.E.D. 2002)	3, 4
<u>Williams v. Kimes</u> , 25 S.W.3d 150, 153 (Mo. 2000)	4

## REPLY ARGUMENT

I. The trial court erred in granting Bi-State's Motion for Order of Complete Satisfaction of Judgment upon the payment of the judgment in the underlying case without interest and in denying Bryant Moore, Jr.'s Motion for Order Compelling Defendant to Pay Interest based upon the trial court's finding that Bryant Moore, Jr. had filed a notice of cross appeal in Appeal No. ED79994 because the law of the case, as set out in the opinion issued by this Court in Appeal No. ED79994, Moore, ex rel. Moore v. Bi-State Dev. Agy., 87 S.W.3d 279, 294-296 (Mo.App.E.D. 2002), was that Bryant Moore, Jr. did not file a valid notice of appeal.

Bi-State incorrectly states in its Brief that the law of the case doctrine has no application here. (R.B.II 12) Bi-State makes this incorrect statement based upon its misunderstanding of the doctrine of the law of the case. In particular, Bi-State argues in its Brief that the Court in Appeal No. ED79994 did not consider whether plaintiff was entitled to post-judgment interest and based upon this flawed reasoning Bi-State maintains that that is why the doctrine does not apply. But, that is not the issue to which the doctrine of the law of the case applies here.

The doctrine of the law of the case applies to the issue of whether or not plaintiff Bryant Moore, Jr. filed a notice of appeal. As quoted by respondent in its Brief, the Court,

in Appeal No. ED79994, unequivocally stated that plaintiff Bryant Moore, Jr. did not file a valid cross-appeal. (R.B.II at 5, 6)

As correctly stated by Bi-State in its Brief, the doctrine of the law of the case applies appellate decisions to later proceedings in the same case and govern successive appeals involving substantially the same issues and facts. Williams v. Kimes, 25 S.W.3d 150, 153 (Mo.banc 2000). The doctrine applies to all points presented and decided, as well as all matters that arose before the first appeal and might have been raised but were not. Id. at 54; Davis v. GE, 991 S.W.2d 669, 703 (Mo.App.S.D. 1999).

The precise issue that the Court considered in Appeal No. ED79994 to which the doctrine applies was whether or not a valid cross appeal was filed by plaintiff Bryant Moore, Jr. The Court concluded that no valid appeal was filed. Moore, ex rel. Moore v. Bi-State Dev. Agy., 87 S.W.3d 279, 296 (Mo.App.E.D. 2002).

In other words and contrary to Bi-State's assertions in its Brief, the issue to which the doctrine of the law of the case applies is not whether or not the Court in Appeal No. ED79994 considered whether plaintiff was entitled to post-judgment interest. Rather, the issue to which the doctrine applies is whether or not plaintiff Bryant Moore, Jr. filed a cross appeal in Appeal No. ED79994. The court concluded that he did not. (Moore, supra. at 296.)

The Court having concluded that Moore did not file a valid cross appeal, plaintiff Bryant Moore, Jr. did not forfeit his right to post-judgment interest under the authorities relied on by respondent, Bi-State. Investors Title Co. v. Chicago Title Ins. Co., 18 S.W.3d

70 (Mo.App.E.D. 2000); Land Clearance for Redevelopment Auth. of Kansas City v. Kansas Univ. Endowment Ass'n, 831 S.W.2d 649, (Mo.App.W.D. 1992).

In summary, the authorities relied on by respondent Bi-State do not apply here. Investors Title Co. v. Chicago Title Ins. Co., supra. and Land Clearance for Redevelopment Auth. of Kansas City v. Kansas Univ. Endowment Ass'n, supra. These authorities do not apply because no valid cross appeal was filed by Bryant Moore, Jr. Therefore, and as mandated by the law of the case, Bryant Moore, Jr. did not forfeit his right to post-judgment interest.

## **CONCLUSION**

Appellant Bryant Moore, Jr. respectfully requests the Court to reverse the trial court's judgment granting defendant Bi-State's Motion for Order of Complete Satisfaction of Judgment because the trial court was in error in holding that Bryant Moore, Jr. had filed a cross appeal and thus forfeited his right to post-judgment interest and to remand the case with directions to the trial court to grant Bryant Moore, Jr.'s Motion for Order Compelling Defendant Bi-State to Pay Interest from April 27, 2001 through December 2, 2002 totaling \$560,160.

Respectfully submitted,

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John D. Warner, Jr. - #30580  
Jeffrey P. Gault - #28734  
GAULT & WARNER, LLC  
222 South Central, Suite 500  
Clayton, MO 63105  
(314) 863-2230/ Fax (314) 863-2348

Richard E. Banks - #36262  
Vincent A. Banks, III - #51404  
BANKS & ASSOCIATES, P.C.  
8000 Maryland Ave., Suite 1260  
Clayton, MO 63105  
(314)721-4040/Fax (314)721-6045

Attorneys for Appellant Bryant Moore, Jr.

### **AFFIDAVIT OF SERVICE**

The undersigned certifies that a copy of Appellant's Second Brief and a disk containing same were deposited on this \_\_\_\_\_ day of July, 2003, in the United States Mail, postage prepaid, addressed to: Mr. James E. Whaley and Mr. T. Michael Ward, BROWN & JAMES, P.C., Attorneys for Respondent, 1010 Market Street, 20<sup>th</sup> Floor, St. Louis, MO 63101.

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John D. Warner, Jr. - #30580

Subscribed and sworn to before me this \_\_\_\_\_ day of July, 2003.

\_\_\_\_\_  
My Commission Expires:

## **CERTIFICATE OF COMPLIANCE**

The undersigned certifies that Appellant's Second Brief complies with the limitations in Eastern District Rule 360, contains 4,415 words, and that the computer disk filed with Appellant's Brief under Rule 84.06 and Eastern District Rule 361 has been scanned for viruses and is virus-free.

\_\_\_\_\_  
John D. Warner, Jr. - #30580